IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 131 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUGARABIBI WD/O.ABDULLA ABDULKARIM - Appellant(s)
Versus
ABDULKARIM ABDUL REHMAN PRIOMUSWALA - Defendant(s)

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Appearance :
MR NAGIN N GANDHI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR EE SAIYED for Defendant is not present.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/12/2006

ORAL JUDGMENT

1. Mr.Nagin N.Gandhi, learned counsel for the appellants. None for the respondent, though name of Mr.E.E. Saiyed,

learned counsel is shown in the Daily Board.

2. The appeal has been admitted for hearing on the following substantial question of law;

(i) Whether the appellate court erred in arriving at the conclusion that the plaintiffs have failed to prove their case that the defendant was their licensee?

(ii) Whether the appellate court erred in holding that Civil Court has no jurisdiction to decide whether the defendant was not the tenant of the suit property?

3. Short facts necessary for disposal of the present appeal are that the plaintiffs filed the suit inter-alia submitting that a room belonging to the plaintiffs, was given to the respondent on licence, as he was working as a domestic servant with them. The plaintiffs further say that the defendant, while continuing in the services, started work of repairing of kerosene stoves / premier stoves and after some time, left the job and devoted himself to the business of repairs of the stoves. The plaintiffs, thereafter, demanded vacant possession of the premises, but the defendant did not concede to the request. It

appears that subsequent to filing of the suit, the defendant made an application to the Municipality that his name be recorded as tenant being occupier in the said premises, the said application was granted and as on today at least from the date of the entry in the register, the defendant is shown to be a tenant. The defendant appeared in the matter and contested the suit on various grounds submitting inter-alia that he was paying the rent and was not a licensee and under the circumstances, the Civil Court would have no jurisdiction because of the applicability of the Rent Act.

4. The Trial Court, after recording the evidence and hearing the parties, decreed the suit, but in the appeal filed by the respondent – tenant, the judgment of the trial court was reversed, therefore, the plaintiffs are before this Court.

5. Mr.Gandhi, learned counsel for the plaintiffs submits that volumes of the evidence available in the records would prove that the defendant was a licensee and was not paying any rent. His submission is that the learned first appellate court was unjustified in relying upon the municipal entry, specially when the same was made after filing of the suit. His submission is that if the facts

were seen in their proper perspective, the learned first appellate court could not set aside the decree passed by the trial court.

6. It is not the case of the appellant that there is no evidence to support the findings recorded by the learned first appellate court. This Court is not exercising its power as an appellate court or a fact finding court. True it is that a fact finding court is entitled to record its own finding and in a given case, where two views are possible, it may record one of the findings in favour of one of the parties. Once such finding is challenged before the High Court, then, the High Court would not be interfering in the said finding simply on the ground that possibility of another view was also possible.
7. High Court would be entitled to interfere in the matter only if the findings are shown to be perverse i.e. there is no material to support the findings or the material which is not available in the records, has been used or the findings are so absurd that no prudent person can arrive at the said finding.
8. In the present case, undisputedly, the defendant in his oral statement has clearly stated that he was a tenant and was paying the rent. If such evidence was available,

then volumes of the evidence are not required to be considered but reliability only is to be seen. In the instant case, the learned first appellate court has placed reliance upon the testimony of the defendant by giving it precedence over the plaintiffs' evidence. If that is so done, there is no illegality in it. The first appellate court did not err in holding that the defendant was not licensee of the plaintiffs, nor it erred in holding that the Civil Court had no jurisdiction.

9. The appeal deserves to and is accordingly dismissed. No costs.

10. A decree be framed accordingly.

(R.S. GARG, J.)

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